

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this Amendment, claims 1, 3, and 5-18 will be pending in the present application. Claims 7-18 have been newly added.

Claims 1, 3, 5, and 6 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. U.S. 6,192,876 to Denyer et al. ("the '876 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

The device disclosed in the '876 reference is an apparatus and a method of ensuring the fit of a face mask to the face of a patient. The device includes a face mask having an inlet through which gas can be inhaled and a sensor for measuring the flow rate of gas drawn in. The device is used to determine whether the mask is properly fit on the user's face by measuring when a substantially regular inhalation waveform is achieved before treatment is delivered. This reference also discloses summing the volume inhaled and the concentration of medication over multiple breaths to determine the total dose of medication delivered.

In contrast with the device described in the '876 reference, the present invention measures and stores breathing information on a data carrier over multiple doses. The breathing information is then analysed to derive breathing characteristics such as the mean inhalation time, inhalation/exhalation ratio, total no flow time, mean total volume, and minute volume. The trend of these values can be generated over multiple drug doses. This information can be used to monitor patient compliance as well as changes in the patient's physical condition. Although the '876 patent discloses storing measured data, this reference does not disclose or even suggest deriving breathing characteristics or trending these breathing characteristics over a number of doses.

To clarify the distinction between the device described in the '876 patent and the present invention, claims 1 and 6 were amended to recite that the breath information is collected over a number of drug deliveries. In addition, dependent claims 7-18 were added to claim some


of the particular breathing characteristics that can be calculated in the present invention. For the purposes of clarity, the term "analyzing" was changed in claim 5 to "analysing" for the purposes of consistency. No change in claim scope is intended by this amendment.

For the reasons presented above, applicant respectfully submits that independent claims 1, 5, and 6 are not anticipated or rendered obvious by the cited references. In addition, claims 3 and 7-18 are also not anticipated or rendered obvious due to their dependency from independent claim 1. Moreover, these independent claims include limitations which further distinguish the present invention from the '876 patent. Accordingly, applicant respectfully requests allowance of claims 1, 3, 5-18.

This response is being filed within the three-month statutory response period which expires on January 15, 2005. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commissioner is authorized to charge the any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to this effect is earnestly solicited.

Respectfully submitted,

By 

Timothy Nathan

Reg. No.: 44,256

Tel. No.: (724) 387-4435

Fax No.: (724) 387-5021

RESPIRONICS, INC.
1010 Murry Ridge Lane
Murrysville, PA 15668-8525